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Supreme Court, U.S.
FILED

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In The
Supreme Court of the United States

Gregory Alston

V.

GTE Directories Corporation

Appendix

On Petition for Writ of Certiorari

UNITED STATES DISTRICT COURT
SEVENTH JUDICAL DISTRICT
UNITED STATES COURT OF APPEALS

On Petition for Writ of Certiorari

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Statement of Issues

1) District Court Judge Manning used her discretion in her ruling. She clearly stated that her reasoning for her ruling was due to the plaintiff had not worked any overtime in 1995.

2) The District Court failed to realize, that the plaintiff is rights under the UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301, §4311(a)(b)ACTS OF REPRISAL PROHIBITED Due to the defendent demanding that the plaintiff work during drill weekends.

3) A clear violation of the Plaintiff's Seventh Amendments Rights. (Jury Trial)

4) The judge to this day has not answered my motion to supplement the record with direct evidance I filed two motions one was mooted and she refused to answer the first motion.

5)Relief from judgment Title 28,U.S.C., §1655 to set aside a judgment for fraud upon the court, all summary judgment against plantiff should be voided.

6)The defendent should be fined, for not particapting in the framwork of discovery.§ 33:416, Fed 37.

7)Court of Appeals failed to embrace the Issue instead the affirmed the desision with hearsay a documente.
Throughtout the case the defendent has produced affidates,witness and documents without allowing for cross examination.

8)Both Court's refused to knowledge that I had established a prima faca case. Dist 1991, 156 Ill.DEC 797. 212 ILL App. 3d 645, 571 N,E.2d 777 By not recognizing that similary employee of defendent were treated more favorable than Alston.

Defendent

GTE, a Delaware Corporation doing business in Illinois with its principal place of business located at GTE Place, 2200 West Airfield Drive, P.O. Box 619810, DFW Airport, Texas 75261-9810.

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1. The Trial Court Erred in not recognizing that the Plaintiff had a Prima Facie Case of Race Discrimination under both Title VII of the Civil Rights Act of 1964 42 U.S.C.§1981.

l) *Johnson v. City of Fort Wayne*, 91 F.3d 922, 931 (7th Cir. 1996)9, 18

2) *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)

2. The Court Erred by not recognizing that similarly employees of Defendant were treated more favorable than Alston.

l) Hiatt v. Rockwell Intern. Corp., 26 F.3d 761 (7th Cir. 1994) 11, 14

2) Johnson v. Artim Transp. System, *Inc.*, 826 F. 2d 538, 543 (7th Cir. 1987)

3) Hughes v. Brown, 20 F.3d 745 at 747 15

4) National Labor Relations Board v. Shelby Memorial Hospital Association, F.3d 550 (7th Cir.- 1993)

5) Green v, Amstrong Rubber Co,. 612F.2d 967,22 F.E.P. Cas (BNA)125 (5th Cir) cert. denied,449 U.S. 879 (1980)

3. The Trial Court erred in granting the Defendant's Summary Judgment, because there were disputed issues of facts pending.

l) Holland v. Arthur Anderson & Co., App. 1 Dist.1991, 156 Ill.Dec. 797, 212 Ill.App.3d 645, 571 N.E.2d 777.20, 21

2) *Sons v. Taylor*, App. 5 Dist.1991, 162 Ill.Dec. 467, 219 Ill.App.3d 923,579 N.E.2d 1281.19, 21

3) Skipper Marine Electronics, Inc. v.United Parcel Service, Inc.,App. 1 Dist.1991, 155 Ill.Dec. 55, 210 Ill.App.3d 231, 569 N.E.2d

3) Kerr v United States Dist. Court for Northern Dist. (1976) 426 US 394. 48 L Ed 725, 96 s Ct 2119.

The Defendant violated The Plaintiff 's rights under the UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301, §4311(a)(b)ACTS OF REPRISAL PROHIBITED

Fair Housing Act 1968 (42 USCS § 3612) 3rd Circut--Laskaris v Thornburg(1984, Ca3 Pa) 733F22d260,38 Fr Serv 2d

Relief from judgment Title 28,U.S.C., §1655 to set aside a judgment for fraud upon the court, all summary judgment against plantiff should be voided.

Ex parte Simons (1918) 247 US 231, 62 Led 1094, 38 S CT 497

Hindman v. National - Ben Franklin life Insurance Corp., 677 F.2d 617.620 ,620 (7th Cir. 1982),

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GREGORY ALSTON,)
)
)
Plaintiff,)
v) Judge Blanche M. Manning
97 C 0559
GTE DIRECTORIES CORPORATION,
Defendant

MEMORANDUM AND ORDER

This matter is before the court on motion of GTE Directories Corporation (GTE), defendant herein, for summary judgment on the complaint of Gregory Alston (Alston), plaintiff herein. Alston has filed a two-count complaint sceking relief for race discrimination pursuant to Title vIr of the Civil Rights Act of 1964 (Title VII), see 42 U.S.C. §2000e et seq. and 42 U.S.C. §1981 (§1981). GTE now moves this court for summary judgment on Alston's complaint pursuant to Fed. R. Civ. P. 56(e). As discussed in greater detail below, this court grants GTE's motion.

BACKGROUND

The relevant background for purposes of the instant motion is as follows. Alston, an African-American male, is an Illinois resident. GTE, a Delaware corporation, does business in Illinois. GTE is a corporate entity that employs in excess of fifteen employees on a fulltime basis, fifty-two weeks per year, and is an "employer" within the meaning of Title VII. GTE operates a printing plant in Des Plaines, Illinois, where it produces, prints, binds, and ships telephone directories. ~rom July or August 1993, until on or about August 8, 1996, Alston was employed in GTE's Des Plaines plant.

Alston was hired by GTE in the summer of 1993 as a helper in the Press Department of GTE's printing plant in Des Plaines, Illinois. As a Pre-press Helper, Alston operated the Rachwal platemaker, a camera system used to take photographs of pages to be printed in the yellow pages directories. The Rachwal imprints the photographs on plates which are then tTansferred to the Pressroom, where the plates are used on the printing press to prod(lce pages for the directories.

For approximately the first eight-to-twelve months that he worked as a Pre-press Helper, Alston worked the first shift, and thereafter, he was transferred to the second shift. Alston understood at the time that he was hired that he would be transferred to the seeond shift.

When Alston was hired, the Des Plaines printing press plant was taking on more business, and because of the increased business, GTE was increasing the number of shifts that were operating in the Pre-press Department. Employees would be moved to different shifts to ensure that there would be adequate coverage on the camera equipment to keep plates ilowing to the printing presses.

At the time that Alston started at GTE, very few employees were working the second and third shifts. Over the course of Alston's employment GTE hired a few new employees to meet increasing demands, but Alston estimates that during the same time period GTE tripled its capacity for plate production, the overall output at the plant increased by sixty per cent, and that GTE needed a full complement of employees on all three shifts to keep pace with demand.

Because the increase in employee numbers was modest compared to the increase in workload, everyone was working very hard and there was little time to do anything in the Prepress Department but produce plates for the printing floor. When new employees were hired, the Company's primary concern was to get them "core training" on any machine that was not manned on a particular shift. Production demands did not permit

existing employees the luxury of "cross-training" to learn new skills. There was time enough only to train new employees to operate the equipment with which they were already familiar.

By 1995, most of the employees in the Pre-press and Press Departments at GTE were working overtime. The minutes of a departmental meeting in June 1995 between management and Pre-press employees stated the following: When a[n] overtime situation arises, employees will be notified as early as possible. Turning down overtime because you don't want to work is NOT ACCEPTABLE. Every employee has been informed of our overtime requirements and will be expected to participate as needed. Continued refusal to work overtime can lead to corrective counseling.

Corrective counseling is a three-step disciplinary process. The first step involves informal discussions. The second step involves a written warning. The third step involves a final warning. The policy explicitly states that "[a]lthough the process is described as a series of steps, the action a supervisor takes with an employee is determined by the specific

I There is at least no dispute that most of the employees in the Pre-press and Press Departments at GTE were working overtime GTE asserts that by 1995, all of the employees in the Pre-press and Press Departments at GTE were working overtime. Alston˜ however, asserts that by 1995, most, but not all, of the employees in the Pre-press and Press Departments at GTE were working overtime Since there is no dispute that most of the employees in the Pre-press and Press Departments at GTE were working overtime, this court will incorporate that fact into the background section for purposes of the instant motion for summary judgment

circumstances of the situation. In some situations an informal discussion is appropriate, while others call for immediate discharge." Employees on corrective counseling are not eligible for promotion.

In October 1995, GTE began the process of insti-

tuting a self-managed work team (SMWT) in the Pre-press Department. The ultimate goal of the SMWT was to empower employees to work collectively, as a group, in making decisions about schedules, training, hours of work, and other issues in the Pre-press Department traditionally resolved by a supervisor. The SMWT was composed of all of the employees on all three shifts in the Prepress Department.

When the Pre-press Department was converted to the SMWT concept, the S~fWT was not immediately capable of assuming full responsibility for all routine management tasks. The Pre-press SMWT conducted approximately two team meetings each month. Alston missed several of these meetings.

Throughout his employment at GTE, Alston ran his own business on the side on evenings and week-ends. Alston also served in the active Navy Reserves, so he was unavailable for work one week-end every month as well as an additional two weeks every year. Throughout his employment at GTE, Alston was also enrolled in courses at Northeastem Illinois University. The classes were mostly unrelated to Alston's employment at GTE, but GTE permitted him to adjust his work schedule so that he could attend class. GTE never denied Alston time off for his personal commitments.

Alston repeatedly refused to work overtime beginning in October 1995, shortly after implementation of the Pre-Press SMWT. Every week-end in October 1995, two week-ends in

November 1995, and every week-end in December 1995, Alston refused requests that he worked overtime. That period was one of the busiest times in the Pre-press Department. Alston was reprimanded for his repeated refusals to work overtime.

In early 1996, the Pre-press SMWT asked its members to sign a Commitment Statement. The purpose of the Commitment Statement was to get members of the SWT to commit to one another their individual and collective commitment to the team concepts inherent in,

and critical to, the functioning and success of the SM~I process. These members of the SMWT created the Commitment Statement which consisted of one sentence, "I agree to participate to the best of my ability in the Des Plaines Pre-Press Self-Management Work Team." Alston repeatedly refused to sign the Commitment Statement. When Alston eventually signed the Commitment Statement, he wrote above his signature, "under duress." Contemporaneously with the circulation of the Commitment Statement for signaturc, the Prepress SMWT was considering altering its member's hours of work from eight hours, five days a week, to ten hours~ four days a week. Alston objected to those hours.

Steve Scarbury met with Alston about his refusal to sign the Commitment Statement. Scarbury was then the Manufacturing Manager, and second in charge of the whole facility. At the time Scarbury approached Alston about his, Alston was the only member of the Pre-press SMWT who had not signed the Commitment Statement. During his meeting with Scarbury, Alston again complained about the hours of work, as well as the team rotations for week-end hours. Scarbury proposed to Alston that he should attend team meetings and participate in the team process to resolve the scheduling issues that were of concern to him.

After the meeting with Scarbury, Alston which was scheduled to begin at 6 p.m. that night, Oberding called Alston into ameeting with Scarbury and Paul Kiefer, the plant manager. Alston left the meeting without permission. Scarbury followed him out, and Alston told Scarbury that he was ready to quit.

Alston's transfer was effective on the night of July 30, 1996. Shortly after he started his shift in the Press Department, Alston told Oberding that he was going home early for personal reasons. Although the parties dispute when Alston left work on July 30, 1996, on his timecard, Alston reported that he left work on July 30, 1996, at 9 p.m. Alston recorded his "Daily Hours Paid" for that day as three hours.

On July 30, 1996, or July 31, 1996, Oberding noted that Alston had written the incorrect time on his timecard. Oberding paged Scarbury after Alston said that he was going home early. Scarbury returned the page before 8:30 p.m.

GTE employees are required to fill out a handwritten timecard, reporting the time that they start working and the time that they stop working each day. At the end of the week, hourly employees at the GTE plant add up their hours, sign the timecards, and then give them to, or leave them for, their supervisors. There is no time clock at the Des Plaines plant to provide independent verification of the time that employees punch in or out. Unless employecs report suspected timecard falsifications, GTE management does not normally have any reason to question the authenticity of employee timecards in the normal course of business.

GTE policy clearly provides that k]nowingly falsifying a time document andlor not reflecting actual time worked will be cause for immediate termination." The policy does not make any exceptions for falsifications of less than an hour. Alston was familiar with GTE's timecard policy. Alston understood that he was supposed to record on his timecard the hours that he actually worked.

After Alston completed his timecard for the pay period and left it for Oberding, Oberding consulted Scarbury's supervisor about Alston's timecard. Oberding told Scarbury that he wanted to offer Alston a chance to correct his timecard. Oberding also expressed his opinion that, if Alston did not correct his timecard, Alston should be discharged.

Scarbury agreed with Oberding's assessment. Scarbury also recommended that Oberding contact Watkins in human resources, which he did. Watkins in turn spoke to Roger DeLong, the pressman with whom Alston was assigned to work on his first night in the Press Department, July 30, 1996. Without telling DeLong what infor-

mation he was looking for, Watkins asked DeLong what time Alston left that night. DeLong told Watkins that Alston left between 8:05 p.m. and 8:20 p.m.

Watlcins also called his supervisor Theresa Martinez, the Regional Director of Human Resourc˜s. Watkins explained the facts as she understood them and solicited Martinez's input. Martinez agreed that termination would be appropriate. Watkins confirmed with Oberding that discharge would be appropriate under the circumstances. Oberding informed Alston that he was discharged for timecard falsification. The only timecard that Alston ever provided to Oberding before his discharge recorded his departure on July 30, 1997, at 9 p.m.

After his termination, Alston created a document to represent what he claims his "timecard should have looked like." Even on that document, he admits that he left work no later than 8:05 p.m. When he later challenged his termination, Alston admitted to Martinez that he recorded the wrong time on his timecard. Neither Oberding, Scarbury, Watkins, nor Martinez are aware of any other GTE employee who ever falsified a timecard. ANAI,YSIS

This court now turns to GTE's Rule 56(c) motion for summary judgment which is before the court. In considering GTE's motion, this court observes that summary judgment is appropriate only where "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). When considering a motion for summary judgment, the court must take the facts in the light most favorable to the party opposing the motion and draw all reasonable inferences in that party's favor. See Vitug v. Multistate Tax Comm'n, 88 F.3d 506, 511 (7th Cir. 1996). The party

opposing a Rule 56(c) motion for summary judgment, however, may not defeat it simply by resting upon the allegations and denials of his or her pleadings, but must present affirmative evidence raising a genuine issue of material fact. See Anderson v. Liberty Lobby Inc., 477 U.S. 242, 256-57, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Where a party fails to present evidence on an element essential to his or her case and on which he or she would bear the burden of proof at trial, summary judgment is appropriate, as all other facts are rendered immaterial by the failure of proof. See Celotex, 477 U.S. at 322-23, 106 S.Ct. at 2552.

Alston brings two claims, on each of which GTE moves this court for summary judgment on its behalf. GTE moves this court for summary judgment in its favor on Alston's Title VII discrimination claim in count I. GTE also moves this court for summary judgment on Alston's §1981 discrimination claim in count II.

1. Alston's Title VII Race Discrimination Claim In Collnt I

This court first addresses GTE's motion for summary judgment on Alston's Title VrI race discrimination claim in count 1. Count I avers that GTE's termination of Alston was racial
discrimination in violation of Title VII. In support of its motion for summary judgment on count I, GTE essentially raiscs two contentions. First, GTE contends that the record reflects that Alston has failed to establish a prima facie case of racial discrimination in violation of Title VII under the circumstantial method of proving Title VII racial discrimination. Second, GTE argues that even assuming arguendo that the record supports a prima facie casf of Title VII race discrimination, the record fails to establish that GTE's proffered reason for terminating Alston1s employment was a pretext for racial discrimination.

A. Alston's Title VII Race Discrimination Claim In Count I

Based On Direct Evidence

As an initial matter, this court dismisses Alston's Title VII racial discrimination claim in count I to the extent that this claim is based on direct evidence. This court observes that discrimination under Title VII may be proved by direct or circumstantial evidence. See Trahat v. Royal Indemnity Co., 121 F.3d 1094, 1097 (7th Cir. 1997). The Seventh Circuit has indicated that direct evidence of discriminatory intent "can be interpreted as an acknowledgment of discriminatory intent by defendant or its agents." Troupe v. Mav Department Stores Co., 20 F.3d 734, 736 (7th Cir. 1994); see also Hunt-Golliday v, Metropolitan Water Reclamation District of Chicago, 104 F.3d 1004, 1010 (7th Cir. 1997). By definition, direct evidence "'if believed by the trier of fact, will prove the particular fact in question without inference or presumption.'" Hunt-Golliday, 104 F.3d at 1010 (quoting Randle v. LaSalle Telecommunications, 876 F.2d 563, 569 (7th Cir. 1989)). Once a plaintiff makes a showing that the employment decision was motivated in part by an unlawful criterion, the defendant employer may avoid a finding of liability by proving that it would have made the same decision despite its reliance on that characteristic. See Geier v. Medtronic, 99 F.3d 238, 244 (7th Cir. 1996).

Upon review, the record in the instant case is devoid of evidence, verbal or otherwise, reflecting an acknowledgment of discriminatory intent by GTE and/or any of its agents in the termination of Alston's employment. Indeed, Alston has not produced, and does not argue that there is any, direct evidence of discriminatory intent in this regard. On the contrary, Alston maintains that the circumstantial evidence in the record establishes a prima facie case of Title VII race discrimination and that GTE's proffered reason for terminating Alston is merely a pretext for discrimination. As such, this court finds that Alston has failed to produce any direct evidence of discrimination in connection with his Title VII race discrimination claim in count I.

B. Alston's Title VII Race Discrimination Claim In Count I Based On Circumstantial Evidence

This court next addresses whether GTE is entitled to summary judgment on Alston's Title VII race discrimination claim in count I to the extent that the claim is based on circumstantial evidence. The direct evidence method of establishing a Title VII employment discrimination claim aside, a Title VII employment discrimination plaintiff may establish a case via circumstantial evidence under the McDonnell Douglas burden shifting scheme. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973). In order to establish a prima facie case under the McDonnell Douglas scheme, a plaintiff must show that she was: (i) a member of a protected class; (ii) performning to her employer's legitimate expectations; (iii) discharged; and (iv) others, similarly situated but not of the protected class, were treated more favorably. See McDonnell Douglas, 411 U.S. at 802, 93 S.Ct. at 1817. Once a prima facie case is established, the defendant must come forward with a legitimate, nonDiscriminatory reason for plaintiff's treatment to avoid liability. See Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253, 101 S.Ct. 1089, 109394, 67 L.Ed.2d 207 (1981); McDonnell Douglas Corp., 411 U.S. at 802, 93 S.Ct. at 1824. After the defendant satisfies its burden of production in this regard, the plaintiff has the final burden of proving that the defendant's proffered reason for the employment decision is merely pretextual. See Geier, 99 F.3d at 242.

This court need not address whether Alston has established a prima facie c˜se of Title VII race discrimination under the McDonnell Douglas scheme. This court finds that even assuming arguendo that Alston has established a prima facie case under the McDonnell Douglas scheme, Alston has failed to raise a genuine issue of material fact as to ˜vhether GTE's proffered reason for terminating his employment is merely a

pretext for discrimination. GTE has met its burden of establishing a legitimate, non-discriminatory reason for terminating Alston's employment. In its memorandum in support of its motion for summary judgment, as well as in its reply brief in support of its motion for summary judgment, GTE asserts that its reason for discharging Alston was timecard falsification. This is sufficient to satisfy GTE's intermediate burden as GTE need only articulate a legitimate, non-discriminatory reason for its employment decision in order to satisfy its burden in this regard. See Burdine, 450 U.S. at 253, 101 S.Ct. at 1093-94.

Since GTE has articulated a legitimate, non-discriminatory reason for its employment decision, Alston must present evidence creating a genuine issue of material fact as to whether

GTE's proffered reason is merely a pretext for discrimination. See Russell v Acme-Evans Company, 51 F.3d 64, 68 (7th Cir. 1995). In attempting to establish a basis that an employer's explanation was merely pretextual, a Title VII plaintiff must "focus on the specific reason[ ] advanced by the defendant to support the discharge." Lenoir v. Roll Coater. Inc., 13 F.3d 1130, 1133 (7th Cir. 1994). The Seventh Circuit has defined "pretext" as "a lie, specifically a phony reason for some action." Id. In the absence of direct evidence of discriminatory intent, Alston must establish pretext indirectly by showing one of the following: (i) GTE's explanation has "no basis in fact;" (ii) the explanation was not the "real" reason; or (iii) at least the reason stated was insufficient to warrant discharge. See id.

This coult finds that Alston has failed to establish that intentional falsification of timecards was an insufficient reason to warrant Alston's discharge. The record in this case reflects that GTE's policy was to discharge employees who intentionally falsify their timecards. GTE has produced a document containing its rules for Personnel Practice. This document contains a

section entitled "Responsibility. n Subsection 3.1.2 provides that "[k]nowingly signing a falsified timecard will be cause for immediate termination." Alston does not dispute that this policy applied to GTE employees at the time of his discharge. As such, given this policy and Alston's failure to present evidence to the contrary, this court concludes that intentional falsification of timecards was sufficient reason to warrant his discharge.

This court also finds that Alston has failed to establish that GTE's explanation of his discharge had "no basis in fact" or that the explanation was not the "real" reason for the decision to discharge Alston. Alston relies on inconsistencies in his own testimony to prove that he did not falsify his timecard. It is undisputed that the timecard that Alston submitted to GTE states that he left work at 9 p.m.on the night of July 30, 1996. However, in his deposition testimony, Alston stated that he "was out of there by 7:00, 7:00 o'clock." Also in his deposition, Alston testified that he left at 8:05 p.m. that evening. In his sworn declaration in opposition to GTE's motion for summary judgment, Alston stated that he left between 8:15 and 8:30 p.m., although his declaration does not say when he quit working on July 30, 1996.

Alston also contradicts his own testimony regarding when he filled out his timecard for the night of July 30, 1996, and whether he intentionally falsified his timecard. Although Alston, in his deposition, initially testified that he had filled out his timecard that night, he later changed his testimony. Alston also testified that he filled out his timecard when it was due˜ at the end of the pay period. However, earlier in his deposition., Alston had testified that it was his practice to fill out his timecard at the end of the day or the next day. In addition, in his declaration submitted in response to GTE's motion for summary judgment, Alston states that he did not ever intentionally falsify his timecard. Alston cannot create a genuine issue of material fact with an

affidavit which contradicts his deposition testimony, or with his inconsistent deposition testimony. Cf. Gray v. American Corp., 937 F.Supp. 762, 769 (N.D Ill. 1996). Moreover, Alston admits in his deposition and declaration that the time that he left work was different from what he reported on his timecard. As such, this court finds that the inconsistencies in Alston's deposition and declaration testimony are insufficient to create a genuine issue of material fact as to whether Alston intentionally falsified his timecard.

This court further finds that the record reflects that GTE had a reasonable basis to believe that Alston falsified his timecard. In the deposition of William Oberding, (state here
what Oberding's position was), Oberding testified that when Alston left for the evening on July 30, 1996, Oberding looked at Alston's timecard and noticed that the time was different than when Alston actually left. In the affidavit of Leslie Watkins, Watkins states that she asked Roger DeLong, a senior pressman, when Alston left work the night of July 30, 1996. According to Watkins, DeLong's response corroborate Oberding's personal knowledge.

Even though Alston relies on evidence that two GTE employees, William McCall and Lynn Print, falsified their timecards but were not discharged, this court finds no merit to Alston's posit;on in this regard. In particular, the record is devoid of evidence that GTE management knew that these or any employees other than Alston, falsified their timecards. In Garduno v. Ouaker Oats Co., 863 F.Supp. 676, 681 (N.D. Ill. 1994), the court conclud˜d that a Title VII plaintiff did not establish that the defendant's reason for discharging him, ˜vaS a pretext for disc˜imination. In so doing, the CGurt reasoned that all of the plaintiff's evidence came from his own mouth, and he had no testimony or affidavits or any other witnesses confirming his allegations and statements. See id. In this case, the record is devoid of any evidence, other than Alston's testimony that GTE man-

agement knew that any employees,2 other than Alston, falsified their timecards but were nevertheless retained. Thus, as in Garduno, Alston failed to establish that the employer's reason for discharging him was a pretext for discrimination. Hence, this court finds that GTE is entitled to summary judgment

2 In his Local Rule 12(b)(3) statement Alston asserts, inter alia, that a meeting was held on or around June 20, 1996, wherein GTE management discussed timecard violations other than Alston's In so doing, Alston relies on his deposition testimony for the assertion that other timecard violations were discussed and the minutes of the June 20, 1996, meeting Nowhere in the minutes of the meeting are individual names used or is there mention of anyone other than Alston who falsified a timecard As a result, Alston's reliance on these materials is without merit on count I of the complaint.

II. Alston's §1981 Race Discrimination Claim In Count II

This court also grants GTE's motion for summary judgment on Alston's §1981 race discrimination claim in count II. The Seventh Circuit has recognized that "[a]lthough section 1981 and Title VII differ in the types of discrimination they proscribe, the methods;of proof and elements of the case are essentially identical." Johnson v. City of Fort Wayne Indiana, 91 F.3d 922, 940 (7th Cir. 1996). In count II, Alston claims that his discharge was racially motivated in violation of §1981 and, in so doing, relies on the same materials in the record in support of his Title VII claims in count I.

Consistent with the foregoing analysis of Alston's Title VII claim in count I, this court grants GTE's motion for summary judgment on count II of the complaint.

CONCLUSION

For the foregoing reasons, This court grants GTE's motion for summary judgment.

JUN 18, 1999

BLANCHE M. MANNING
United States District Court Judge

For the Seventh Circuit
Chicago, Illinois 60604

Subrnitted April 22, 1999
Decided Apnl 22, 1999

Before

Hon. RICHARD A. POSNER, C'hief Judge

Hon. FRANK H. EASTERBROOK, Circuil Judge

Hon. MICHAEL S. KANNE, Circuit Judge

No. 98-2842

GREGORY ALSTON,

Plaintiff-Appellant,

Appeal from the United States District Court for the Northem District of Illinois, Eastern Division

No. 97 C 0559

GTE DIRECTORIES CORPORATION,
Defendant-Appellee.

Blanche M. Manning, Judge.

ORDER

Believing his former employer, GTE Directories Corp. ("GTE"), fired him because he is African American,

Gregory Alston filed suit against GTE under Title V˜ of tne I 964 Civil Rights Act and 42 U.S.C. § 1981 . The district court granted GTE summary judgment finding that Alston had not raised a genuine issue of material fact regarding the company's motivation for firing him. We affirm.

Background

For three years Alston worked at GTE's Des Plaines printing plant, spending all but the last few weeks in the pre-press department. During his time there, GTE instituted team management in certain departments, including the pre-press department. Alston resisted the move

After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a)(2).
to team management, so his supervisors decided to move Alston to the press department where team management had not been instituted. They informed Alston of the transfer at a meeting on July 30, 1996. Alston apparently was upset and walked out of the meeting. He then went to work in the press department, but after a few hours he went home.

When Alston filled out his timecard for July 30, he credited himself with working three hours, from 6 p.m. to 9 p.m. It is undisputed, however, that Alston left, at the latest, by 8:15 p.m. Alston's supervisor, Bill Oberding, noticed that Alston had written the incorrect time on his time card. Oberding informed his supervisor of the problem and confirmed with a person in the press department that Alston had left before 8:30.

Oberding then spoke with the plant's human resources administrator, who informed him that Alston could be discharged for timecard falsification. Oberding also learned that Alston had previously been warned about timecard falsification. Finally, Oberding approached Alston and asked him if he wanted to submit his timecard in its current form. The parties dispute whether Alston was given a full opportunity to correct the timecard at that time, but it is undisputed that Alston never sought to change the timecard. Shortly thereafter Oberding fired Alston.

Believing GTE fired him because he is African American, Alston sued GTE under Title VII of the 1964 Civil Rights Act and 42 U.S.C. § 1981. The district court, applying the McDonnell Douglas framework, concluded that Alston had not raised a genuine issue of material fact regarding whether GTE's articulated reason for firing him, timecard falsification, was pretextual. The district court, therefore, granted GTE summary judgment. Alston now appeals.

Analysis

We review a district court's grant of summary judgment de novo, construing the evidence and the inferences drawn from it in the light most favorable to the non-moving party. See Curran v. Kwon, 153 F.3d 481, 485 (7th Cir. 1998). Summary judgment is appropriate where there is no genuine issue of material fact such that judgment is proper as a matter of law. See id. (citing Fed. R. Civ. P. 56(c)).

Having no direct evidence of racial discrimination, Alston pursues the McDonnell Douglas indirect method of proving his discrimination claims. See Johnson v. City of Fort Wayne, Ind, 91 F.3d 922, 931 (7th Cir. 1996). Under this approach, a plaintiff must first establish a prima facie case. Id. If the plaintiff makes such a showing, the employer must articulate a legitimate, nondiscriminatory reason for its actions. Id. Once an employer

does so, the burden shifts back to the plaintiff to show that the proffered reason is pretextual. Id The parties dispute whether Alston has established his prima facie case, but we decline to resolve this dispute. Instead, because GTE has met its burden of articulating a legitimate, non-discriminatory reason for Alston's termination, we proceed directly to the issue of whether Alston has raised a genuine issue of material fact concerning pretext. See Chiaramonte v. Fashion Bed Group, Inc., 129 F.3d 391, 398 (7th Cir. 1997).

A plaintiff attempting to establish pretext indirectly. as Alston is, must demonstrate that the employer's proffered reason is unworthy of credence. See Essex v. United Parcel Ser˜.. 11 I F.3d 13W, 1310 (7th Cir. 1997). Such a showing requires evidence that the employer's explanation: (I) has no basis in fact; (2) was insufficient to warrant the action taken; or (3) did not actually motivate the employment decision. See Johnson, 91 F.3d at 931; Mechnig v. Sears, Roebuck & Co., 864 F.2d 1359, 1365 (7th Cir. 1989).

The relevant question is whether the employer honestly believed its proffered reason for discharge, not whether the employer was mistaken, acted unfairly, or based its decision on a bad policy. See Bahl v. Roval Indemnitv Co., 11˜ F.3d 1283, 1291 (7th Cir. 1997); Essex, 111 F.3d at 1310: Giannopoulos v. Brach & Brock Confections, Inc., 109 F.3d 406, 411 (7th Cir. 1997).

Much of Alston's argument on appeal purports to challenge whether the timecard falsification explanation offered by GTE has a basis in fact. The problem for Alston is that all his allegations and evidence focus on the correctness of the falsification charge or the faimess of the discharge procedure. For example, Alston asserts that he did not intend to falsify his timecard and points to evidence he claims supports this assertion. None of the evidence, however, refutes the undisputed facts that his timecard was inaccurate, that he had previously been warned of timecard falsification, and that he did not take the opportunity he was given to correct his

timecard. While there may be room for disagreement conceming whether GTE was right in concluding that Alston intentionally falsified his timecard, there is undoubtedly a factual basis for such a conclusion. The same is true with respect to each of Alston's attempts to show the timecard falsification explanation lacks a factual basis. C˜ Bahl, I 15 F.3d at 1291-92 (employer had factual basis for discharge regardless of whether performance was in fact inadequate).

Alston fares no better in challenging whether his misconduct warranted discharge. GTE policy expressly provides that "[k]nowingly falsifying a time document and/or not reflecting actual time worked will be cause for immediate termination." Moreover, just over one month before Alston submitted his inaccurate timecard, his supervisor had informed the pre-press team that falsification of timecards "will lead to immediate termination." Alston cannot argue that timecard falsificatiGn did not warrant discharge.

Finally, Alston's attempt to demonstrate that timecard falsification was not the "real reason" GTE fired him also falls short. Alston first tries to point to similarly situated non-African American employees who falsified their timecards yet were not discharged. Alston's allegations in this regard do not rise much above mere speculation.

But even if we were to give some weight to the allegations, it would not raise a genuine issue of material fact since there is no competent evidence that GTE knew that the employees Alston identifies, or any other employees, falsified their timecards. C˜ Essex, I I I F.3d at 1311 (management had no knowledge of excessive moonlighting by others); Mechnig, 864 F.2d at 1366 (management had no knowledge of timecard falsification by others). Alston argues that GTE must have been aware of timecard falsification given that the subject was mentioned at a pre-press team meeting. But, there is no hint that the discussion at that meeting was motivated by knowledge of falsification by particular persons, that the alleged persons were not African Ameri-

can, or that the alleged persons were not terminated.

Alston also argues that because the Illinois Department of Employment Security ("IDES") found that he was not fired for cause and granted him unemployment benefits, it follows that he was not, in fact, fired for timecard falsification. The IDES finding, however, does not go to the honesty of the explanation GTE gave for firing Alston. GTE apparently told the IDES that the reason for Alston's discharge was timecard falsification. The IDES may have decided that the ground GTE gave was not right (or not adequate), but Alston's discrimination suit does not depend on whether he was fired "for cause," it depends on whether he was fired for race. That the IDES may have concluded that timecard falsification is not "cause" does not imply a finding that GTE did not believe that this was the reason for his discharge. C~ McClendon v. Indiana Sugars, Inc., 108 F.3d 789, 798-99 (7th Cir. 1997) (rejecting an identical argument).

In sum, Alston has failed to produce any competent evidence that raises a genuine issue of material fact regarding the honesty of GTE's explanation that he was fired because of timecard falsification. Thus, the district court properly granted GTE summary judgment on Alston's Title VII claim. Likewise, because claims brought under 42 U.S.C. § 1981 and ones brought under Title VII are amenable to the same methods of proof and the elements of each type of claim are essentially identical, see Johnson, 91 F.3d at 940, we conclude that the district court properly granted summary judgment on Alston's § 1981 claim. Accordingly, we AFFIRM.

IN THE

SUPREME COURT OF THE UNITED STATES

GREGORY ALSTON,	)	
	)	
Plaintiff-Appellant	)	97C 0559
	)	
v.	)	
	)	No. 98-2842
	)	
GTE DIRECTORIES CORPORATION,	)	
	)	
Defendant-Appellee	)	
	)	

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PLEASE TAKE NOTICE Gregory Alston Plaintiff-Appellant, Pro Se on or before OCT 2, 1999, AS REQUIRED BY SUPREME COURT RULE 29 I have served the petition for CERTIORARI WRIT on each party to the above proceedings or that party's counsel, and on every other person required to served, by depositing an envelope containing the above documents in the United States Mail properly addressed to each of them and with first-class postage prepaid.

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GTE Directories **BI-WEEKLY TIME REPORT**

2

GREGORY ALSTON
DEPT. 31~~5107~~ 3
354-62-6924
WK END: SHIFT:

AMOUNT SHIFT PREMIUM $ _____

OTHER DOLLAR ADJUSTMENTS (FOR PAYROLL USE) HED ____ AMT ____

Date		IN	OUT	IN	OUT	DAILY HOURS PAID REG	O.T.	D.O.T.*	VAC.	ILL	HOL	JURY	** UNPD	OTHER (SPECIFY)
	Sun.	5:00			6:00		1							
	Mon.													
	Tue.	6:00			9:00	3								
	Wed.	6:00			4:00	10								
	Thur.	6:00			4:00	10								
	Fri.	6:00			4:00	10								
	Sat.													
	Sun.													
	Mon.													
	Tue.													
	Wed.													
	Thur.													
	Fri.													
	Sat.													
TOTAL HOURS PAID						33	1							
						01	02	04	08	11	07	09	15	

INSTRUCTIONS
1. Name and Period Ending must be completed
2. Hours should be computed in one-quarter hours
3. Employee and Supervisor must sign report

* Double Over Time
** Unpaid Hours

EMPLOYEE SIG _____

SUPERVISOR SIG _____

FORM 99 DC REV. (9/88)

EXHIBIT

BEST AVAILABLE COPY